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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,918	02/16/2001	William J. Andres	SMS919990003	4297

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT PAPER NUMBER

3627

DATE MAILED: 10/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/784,918

Applicant(s)
Andres et al

Examiner
Steven McAllister

Art Unit
3627



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Oct 11, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 2167

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sell off component; the inventory control component; the offer preparation component; the sell off management component; the means for identifying time-sensitive inventory; the means for updating records; the means for dynamically creating at least one sell off file; the auction tracking component; the means for advertising offers must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2167

Claim 1 is indefinite because it recites a system (which is interpreted as an apparatus in order to comply with 35 USC 101) having “a front-end process” and “a back-end process”. The claimed processes does not further limit the system.

Claims 3 and 15 are indefinite because it recites a component for automatically identifying time-sensitive inventory as part of the sell off component, but claim 1 recites that it is part of the “front end process”.

Claims 13 and 26 are indefinite because the preamble recites a method, but no method steps are explicitly claimed. Rather, “a front-end process”, “a sell-off component”, and “a back-end process” are claimed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35

Art Unit: 2167

U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (6,119,100).

Walker et al show all elements of the claim including a sell off component for offering inventory for selective sale and handling communications with buyers.

As to claim 2, Walker et al show an inventory tracking component; an offer preparation component; and a sell off management component.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Walker et al (6,052,667).

Walker et al do not explicitly recite an element which identifies time-sensitive inventory for sell off. '667 shows this element. It would have been obvious to one of ordinary skill in the

Art Unit: 2167

art to modify '100 by automatically identifying items to be sold off as taught by '667 in order to minimize the amount of manual intervention required.

As to claim 4, '100 in view of '667 show updating records of items.

As to claim 5, '100 in view of '667 inherently show that the inventory control component is adapted to communicate item-specific information to the offer preparation component since such information is needed to prepare the offer.

As to claims 6 and 7, '100 in view of '667 show that the offer preparation component creates at least one sell off file with item specific information and auction control data comprising minimum offer price.

As to claim 8, '100 in view of '667 show an auction tracking component for maintaining historical auction data, since historical auction data (e.g., auction results) are maintained.

As to claim 9, '100 in view of '667 show an means for creating a sell off file comprising item-specific information and historical data.

As to claims 10-12, '100 in view of '667 show all elements of the claim except a means for advertising via a website or email. However, means for advertising via a website or email are notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the apparatus of '100 by providing such an advertising means in order to increase sales.

As to claim 13-22, it is noted that the system of '100 in view of '667 performs all method steps of the claims.


Art Unit: 2167

As to claims 23-25, '100 in view of '667 show all elements of the claim except advertising via a website or email. However, advertising via a website or email are notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of '100 by providing such advertising in order to increase sales.

As to claim 26, the apparatus of '100 in view of '667 uses software performing all recited steps.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052.


Steven B. McAllister

September 28, 2003